

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON

December 8, 2005 Session

**DEBORAH COLEMAN v. KELLOGG USA, INC.**

**Direct Appeal from the Chancery Court for Shelby County  
No. CH-04-0973-I Walter L. Evans, Chancellor**

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**No. W2005-00771-WC-R3-CV - Mailed April 20, 2006; Filed May 22, 2006**

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This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Tennessee Supreme Court of findings of fact and conclusions of law. The trial court granted summary judgment based upon notice, the statute of limitations, and the hernia statute. We find summary judgment in this case was inappropriate, reverse the judgment of the trial court, and remand the case for further proceedings consistent with this opinion.

**Tenn. Code Ann. § 50-6-225(e) (2005) Appeal as of Right;  
Judgment of the Chancery Court Reversed; Remanded**

ALLEN W. WALLACE, SR. J., delivered the opinion of the court, in which JANICE HOLDER, J. and ROBERT EWING CORLEW, SP. J., joined.

William Steven Taylor, Memphis, Tennessee, for appellant, Deborah Coleman.

W. Stephen Gardner, R. Joseph Leibovich, Memphis, Tennessee, for appellee, Kellogg Company USA, Inc.

**MEMORANDUM OPINION**

The facts of this case are generally undisputed. Appellant/Plaintiff ("Employee") was injured on June 28, 1993, while pushing and pulling several large containers across a concrete floor and began to experience pain in her groin/pubic area. Employee reported the pain to her Appellee/Defendant ("Employer"), but she believed the pain was associated with a female-related condition. She was treated for such condition including a hysterectomy, but with no success in treating her pain. On June 26, 1996, Dr. Jeffrey Robert Jernigan opined her condition was muscular in nature and not female related. She then reported the injury to Employer, and within one year of that date on January 17, 1997, she filed a complaint in court for benefits. Finally, after seeing various doctors, including a pain specialist, Employee was referred to Dr. Mark Page Miller who

performed surgery on November 16, 1999, and found a left inguinal hernia and a lymphadenopathy in the same area, under the Employee's pubic bone. Lymphadenopathy is an enlarged lymph node which was enlarged as a reaction to infection, and in this case caused by the hernia in the same area.

After surgery, Employee's pain, which had continued since June 1993, subsided. Employee's complaint was non-suited in 2004 and then refiled as a new complaint on May 20, 2004, seeking benefits under the Workers' Compensation Law, including hernia and a psychological injury.

The proof in this case establishes that no one, including her physicians, knew Employee had a hernia and resulting medical conditions caused by such hernia, until she had surgery. On January 26, 1996, Employee was advised by Dr. Jernigan that she had a pulled muscle from her pelvic bone, and she reported that injury in June 1996. Employer concedes that this notice was timely given if this was a pulled muscle case. However, even at this point in time, no one, including medical experts, knew she had a hernia. This was not known until her surgery on November 16, 1999.

#### Standard of Review

We are to determine if the trial court was correct in granting Employer's motion for summary judgment in accordance with Rule 56 of the Tennessee Rules of Civil Procedure. In determining whether to grant a motion for summary judgment, a trial court must view the pleadings and evidence in a light most favorable to the opposing party of the motion. Summary judgment is to be rendered only when it is shown that there is not a genuine issue as to a material facts and that the moving party is entitled to a judgment for summary judgment as a matter of law. Tenn. R. Civ. P. 56; *Hillard v. Tenn. State Home Health Serv., Inc.*, 950 S.W.2d 344, 345 (Tenn. Spec. Workers' Comp. Panel 1997); *Byrd v. Hall*, 847 S.W.2d 208, 211 (Tenn. 1993). Rarely are such motions an option in workers' compensation cases. *Berry v. Consol. Sys., Inc.*, 804 S.W.2d 445 (Tenn. 1991).

Summary judgments enjoy no presumption of correctness on appeal. *Summers v. Cherokee Children & Family Servs., Inc.*, 112 S.W.3d 486, 507 (Tenn. Ct. App. 2002). Our task on appeal is to review the record to determine whether the requirements for granting summary judgment have been met. *Church v. Perales*, 39 S.W.3d 149, 157 (Tenn. Ct. App. 2000). We must use the same standard as the trial court in reviewing a trial court's judgment granting summary judgment. *Prince v. Saint Thomas Hosp.*, 945 S.W.2d 731, 733 (Tenn. Ct. App. 1996). Since our inquiry on appeal involves purely questions of law, the standard for reviewing a grant of summary judgment is *de novo* without any presumption that the trial court's conclusions were correct. *Webber v. State Farm Mut. Auto Ins. Co.*, 49 S.W.3d 265, 269 (Tenn. 2001).

#### Analysis

An employee's reasonable lack of knowledge of the nature and seriousness of injury or of whether the injury is work related may excuse failure to give notice within thirty days. *Pentecost v. Anchor Wire Corp.*, 695 S.W.2d 183 (Tenn. 1985). It is obvious Employee did not have sufficient knowledge, due to the opinions of her doctors, of the nature of her injury. See *Livingston v. Shelby*

*Williams Indus., Inc.*, 811 S.W.2d 511 (Tenn. 1991); *CNA Ins. Co. v. Transou*, 614 S.W.2d 335 (Tenn 1988).

Employee did not know she had a hernia and other related medical problems until her surgery on November 16, 1999. Evidence that her pain beginning from 1993 until her pain was relieved after discovery of a hernia in 1999 and the alleged psychological injury due to years of pain, were not addressed by the trial court. The Workers' Compensation Law should be liberally construed in favor of an injured employee receiving benefits, recognizing the continued devastation that often follows on job injuries. *Betts v. Tom Wade Gin*, 810 S.W.2d 140 (Tenn. 1991). Employer emphasizes that no notice of hernia or mental claim was given and that such claim should have been specifically pleaded. To so hold would be giving a strict interpretation of the Workers' Compensation Law instead of a liberal construction as required by the law. There is no question in this case that Employee gave timely notice and subsequently filed a complaint that an injury occurred and that she was entitled to be compensated pursuant to the workers' compensation laws of the State of Tennessee. Due to the unique facts of this case, and the fact that the Workers' Compensation Law should be liberally construed in favor of an employee receiving benefits, we therefore hold that it is not appropriate to decide such issues by summary judgment.

#### Conclusion

In light of the foregoing, we reverse the trial court and remand the case for hearing on all the issues. Cost of this appeal are taxed to the Appellee, Kellogg USA, Inc., and its surety, for which execution may issue if necessary.

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ALLEN W. WALLACE, SENIOR JUDGE

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**JUDGMENT ORDER**

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellee, Kellogg USA, Inc., for which execution may issue if necessary.

**IT IS SO ORDERED.**

**PER CURIAM**